

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 317 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MOHAMED JAVED RAFIK SHAIKH

Versus

THE STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for MS JAYSHREE C BHATT for Petitioner
MR IM PANDYA APP for respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA
Date of decision: 06/05/2005

ORAL JUDGEMENT

1. By way of filing this Special Criminal Application, the petitioner has challenged the order of externment, passed against him by Deputy Police Commissioner, Eastern Zone, Surat, on 19th of July, 2004

in exercise of powers conferred upon him under Section 56 (a) (b) of the Bombay Police Act, 1951, by which the petitioner came to be externed for one year from Surat City, Surat Rural and contiguous Districts of Bharuch, Narmada, Navsari and Valsad. The petitioner preferred a statutory Appeal under Section 60 of the Bombay Police Act, 1951, to the Appellate Authority against the above said order of Deputy Police Commissioner, Surat, which also came to be dismissed by the Appellate Authority on 8th of October, 2004. Both the orders are in challenge in this Special Criminal Application.

2. Facts as disclosed from the record reveal that a notice to show cause was issued against the petitioner on 15th of April, 2004 by the Assistant Police Commissioner, 'B' Division Police Station, Surat, in pursuance of Section 59(1) of the Bombay Police Act, 1951. It was alleged that for the nefarious activities of the petitioner, he was required to be removed from the said Districts, in exercise of power conferred upon the authority vide Section 56 (a) (b) of the Bombay Police Act, 1951. The authority took into consideration one crime registered against the petitioner before Rander Police Station, bearing Crime Register No. 327 of 2003 for the offences punishable under Sections 324, 337 and 504 of the Indian Penal Code. The authorities also relied upon in-camera statements of two witnesses and reached to the satisfaction that the petitioner was headstrong, ferocious and of violent temperament. On account of fear of the petitioner, none dared to file any complaint against him nor anybody was prepared to depose against the petitioner. On receiving show cause notice, petitioner replied as well as tendered oral evidence in his defence. After considering the material available with the competent authority and the defence of the petitioner, as aforesaid, the Deputy Police Commissioner, Eastern Zone, Surat City, reached to the conclusion that the activities of the petitioner were injurious to the person and property of general public and, therefore, earlier on 30th of June, 2004 instead of externing the petitioner, an opportunity was afforded to him to improve himself by furnishing a personal bond and surety of Rs. 50,000/-. The externing authority further observed in the order that even then on 7th of July, 2004, at about 13.30 hours, a crime was registered against the petitioner, being Crime Register No.II-308/04 under Section 506(2) and 504 of the Indian Penal Code in breach of the surety offered by the petitioner and, therefore, the said order passed by the competent authority on 30th of June, 2004, was vacated, and thereafter considering the material on record, the authority concerned passed

the order impugned in this Special Criminal Application.

3. Learned Advocate Ms. Banna Dutta for learned Advocate Ms. J.C.Bhatt for the petitioner and learned APP Mr. I.M. Pandya for the respondents were heard at length.

4. Learned Advocate for the petitioner pressed in service the sole ground that the competent authority while deciding the proceeding of 19th of July, 2004, took into consideration the materials, which were not mentioned in show cause notice, issued under Section 59(1) of the Bombay Police Act, 1951. It was contended that Crime Register No. II 308/2004 registered against the petitioner before Rander Police Station on 7th of July, 2004 was not the material of the Notice issued under Section 59(1) of the Bombay Police Act. It was therefore contended that the orders in question, are required to be quashed and set aside on this ground alone.

5. Learned APP Mr. Pandya vehemently opposing the contentions, stated that, in fact, the said crime was not taken into consideration by the competent authority, but the same was referred by the authority in context with the earlier order, by which an opportunity was afforded by the competent authority to the petitioner to improve himself by furnishing personal bond and surety for proper behaviour and, therefore, as contended by learned APP Pandya, in this context, this crime which is registered after issuance of the show cause notice, is referred to in the order. It was urged that the application deserves to be dismissed.

6. Considering the rival contentions, it appears that in this Special Criminal Application, the powers of externing authority acting, under Section 56 of the Bombay Police Act, 1951, to direct any person to furnish personal bond and surety in lieu of externment, is not required to be decided. Though under Section 56, no where such provision is made, however, the fact remains that while referring to such earlier order of 30th of June, 2004, it is apparent that the competent authority took into consideration the fact of filing of a crime against the petitioner before Rander Police Station being Crime Register No.II 308 of 2004. The observations made by the competent authority in this para, goes to establish that on account of subsequent behaviour of the petitioner after the issuance of notice, the petitioner was liable to be externed. In other words, without deciding the legality of the order passed by the

competent authority on 30th of June, 2004, it could be said that the competent authority took into consideration the subsequent events occurred after the issuance of notice, for which no opportunity was afforded to the examinee to explain his defence in this regard.

7. Considering Section 59 of the Bombay Police Act meaningfully, it mandates that the authority authorized to pass orders under Section 56, shall inform the person concerned, in writing the general nature of the material allegation against him and give him a reasonable opportunity of tendering an explanation regarding them. The provision further mandates that if such person makes an application for the examination of any witness produced by him, the authority or officer concerned, shall grant such application. Taking into consideration this provision in its real spirit, it establishes above board that, no authority shall travel beyond the scope of the show cause notice issued under Section 59(1) of the Bombay Police Act. If the subsequent events are allowed to be taken into consideration by the competent authority, the same will frustrate the very object of the provisions made and will render Section 59(1) futile.

8. In the present set of facts, it becomes very clear that the authority concerned, travelled beyond the scope of notice under Section 59(1) of the Bombay Police Act, 1951. It is apparent from the order passed that one of the reasons for externing authority was, he committed breach of the surety, which he offered for his proper behaviour, and a crime came to be registered against him after issuance of show cause notice. This is established law that when the authority travels beyond the scope of the notice under Section 59(1) of the Bombay Police Act, again it deprives the person concerned from offering his explanation, which is a right given to him by provisions of Section 59(1) of the Bombay Police Act, 1951. In such circumstances, the whole proceedings becomes bad in law and the order passed becomes vitiated on this ground alone.

9. In view of above discussion, the order passed by the Deputy Police Commissioner, Western Zone, Surat, on 19th of July, 2004, and the order passed by the Appellate Authority on 8th of October, 2004, both are required to be quashed and set aside, on this ground alone, that the externing authority travelled beyond the scope of the Notice issued against the petitioner under Section 59(1) of the Bombay Police Act, 1951 and took into consideration the materials which was not the part of the

said Notice.

10. In the result, the petition is allowed. The order passed by the Deputy Police Commissioner, Western Zone, Surat, on 19th of July, 2004 and the order passed by the Appellate Authority on 08.10.2004, both the orders, are hereby quashed and set aside. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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